

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0263**  
**Sales and Use Tax for 2003**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales/Use Tax—Assessment on Purchase of Aircraft**

**Authority:** IC 6-8.1-5-1(b); IC 6-6-6.5-2; IC 6-6-6.5-9; IC 6-2.5-3-2(b); IC 23-18-12-4; Department of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Cambria Iron Co., v. Union Trust Co., 55 N.E. 745 (Ind. 1899).

Taxpayer protests the assessment of sales and use tax on the purchase of an aircraft. Taxpayer asserts the aircraft is rented and leased.

**STATEMENT OF FACTS**

Taxpayer is a limited liability company. It purchased an aircraft in October 2003. In May 2004, the Department received an annual aircraft report from [IEA], an Indiana airport. The report listed Taxpayer's aircraft as being based at the airport. The name of the owner attributed to the aircraft was listed as [JM], a member of Taxpayer LLC. In July 2004, the Department sent JM a letter informing him that the aircraft was not registered with the State of Indiana; an application was enclosed with the letter.

In September 2004, Taxpayer sent a letter to the Department stating that Taxpayer had enclosed the Aircraft Registration application. The application listed Taxpayer LLC as the owner of the aircraft. Taxpayer claimed an exemption from sales and use tax due on the purchase of the aircraft, checking off rental and lease to others. Taxpayer did not enter its registered retail merchant number on the application, nor did Taxpayer check off whether the aircraft was purchased from a registered Indiana dealer. Additionally, Taxpayer stated on the application that the aircraft was purchased in October 2003, but was moved to Indiana in March 2004.

The Department sent Taxpayer a letter in November 2004 requesting Taxpayer to substantiate the eligibility of the rental and lease exemption. Enclosed with the letter was a proposed assessment. Taxpayer submitted documentation to the Department. In December 2004, the Department requested additional documentation to substantiate the exemption.

In December 2004, the aircraft was registered with the FAA under the corporate name [MPA LLC]. The owner of the aircraft currently named on the FAA certificate is [MPA LLC]. When the Department had checked on the registration of the aircraft several months earlier, in June 2004, the FAA had listed the registration of the aircraft as pending. "Registration pending" is the term used by the FAA when it receives notice of a sale of an aircraft and the previous owner has released claim on the aircraft, but the new owner has not submitted an application for registration. The FAA marked the aircraft as registration pending in January 2004.

In April 2005, the Department sent Taxpayer a letter denying the exemption. The basis of the denial of the exemption was that the lease agreement named Taxpayer as a party to the agreement, but the aircraft was not registered with the FAA as being owned by Taxpayer. As well, Taxpayer had not submitted the required sales and use tax returns and had submitted no sales tax payments collected on the leases. It needs to be noted that in November 2004, Taxpayer had submitted a check in the amount of \$485.60. Taxpayer also had included a completed Form ST-103, *Sales and Use Tax*, for the period January through December 2003, listing zero as the amount of sales and use tax due. The coupon had been due on or before February 2, 2004—as stated on the coupon. The Department returned the check to Taxpayer, stating in a letter that the Department cannot accept and process the payment for sales and use tax for Tax Year 2004 until February 2005 since Taxpayer was an annual filer.

Taxpayer filed a protest and a hearing was held. Because Taxpayer did not appear at the hearing, this letter of finding is written based upon the information within the file.

## **I. Sales/Use Tax—Assessment on Purchase of Aircraft**

### **DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

IC 6-6-6.5-2 requires an Indiana resident who owns an aircraft to register the aircraft with the state no later than 31 days after the purchase date. IC 6-6-6.5-9 lists eight exemption provisions not requiring registration; IC 6-6-6.5-9(6) states that an aircraft owned by an Indiana resident is exempt from registration if the aircraft is not based in this state at any time—provided that the owner files the required form, Form AE-1, not later than 31 days after the date of purchase; and furnishes the Department with evidence, satisfactory to the Department, verifying where the aircraft is based during the year. Form AE-1, *Based Out of State Certificate of Exemption for Aircraft*, requires that the Indiana resident attach to the form as evidence of basing out of state: (1) the hangar lease agreement, the hangar rent receipts (minimum 11 months), or a letter from the airport manager; and (2) a paid sales tax receipt or the current state registration.

Summarizing Indiana law as it applies to Taxpayer—under the requirements of Indiana statute, an Indiana resident that owns an aircraft is required to inform the state whether its newly purchased aircraft is based within or outside Indiana by filing either a registration form or an exemption from registration form within 31 days of the purchase date. Taxpayer did neither. The aircraft was purchased in October 2003, which means that the State of Indiana needed to be informed by November 2003.

On October 1, 2003 Taxpayer applied to the Department to register as a retail merchant, presumably in contemplation of an aircraft purchase. This indicates that Taxpayer contacted the Department concerning its enterprise. Since the name of Taxpayer includes the term, "Aviation, LLC" within its name, it is reasonable to believe Taxpayer's enterprise involved aircraft—for which Taxpayer has a duty under Indiana law to register if an aircraft is purchased.

Under IC 6-2.5-3-2(b), use tax is imposed on the storage, use, or consumption of an aircraft, if the aircraft is: acquired in a transaction that is an isolate of occasional sale; and is required to be titled, licensed, or registered by this state for use in Indiana. Taxpayer as an Indiana resident has the responsibility to demonstrate that sales and use tax does not apply to its purchase of the aircraft. The

Indiana Supreme Court has held that exemption statutes are strictly construed against a taxpayer; a taxpayer has the burden of establishing its entitlement to an exemption. Department of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

The Department would have become alerted to Taxpayer's purchase of the aircraft sooner than it did in this case. Because the aircraft was not registered with the FAA until December 2004—fourteen months after the purchase—the Department did not know Taxpayer had based an aircraft in Indiana until May 2004—over six months after the purchase. The Department discovered the aircraft when it was listed by [IEA], an Indiana airport, on its annual report of aircraft based there. The name listed as having acquired a hangar was not Taxpayer's name, but that of the LLC's member, [JM]. This raises suspicion on several levels, including whether the aircraft was being used personally and why the aircraft was not registered in Indiana. Documentation from another Indiana airport, [IIA], indicates that the aircraft had been hangared and based in Indiana since January 2004. The lease was a one-year agreement, set to expire in January 2005. The lessee named on the lease was [JM], not Taxpayer. [JM] listed his title as owner on the hangar lease agreement.

The insurance policy providing liability coverage named the insured as [MPA LLC], not as Taxpayer. The period covered was December 2003 to December 2004 and the covered permitted uses included "Pleasure and Business." The bill of sale for the aircraft, signed in October 2003, listed [MPA] as the purchaser. Lease agreements to rent the aircraft list Taxpayer as the lessor. The Department has asked Taxpayer to explain why three differing representations of owners appear contemporaneously. Taxpayer has not provided adequate documentation and explanation. Taxpayer did provide documentation of the change of entity name from [MPA LLC] to Taxpayer. However, the Certificate of Amendment changing the LLC name from [MPA] to Taxpayer was not filed until the end of November 2004. The Department spoke with the Secretary of State office; its representatives explained that the date sealed on the amendment as the effective date of the name change is the date the request was filed. This complies with IC 23-18-12-4. For the first year the aircraft was owned, [JM], [MPA], and Taxpayer are represented as the owners on various documents.

Indiana Form 7695, Application for Aircraft Registration or Exemption, submitted by Taxpayer in September 2004, listed the name of the owner of the aircraft as Taxpayer. The Department originally denied the tax exemption filed by Taxpayer on the basis that the leases to rent the aircraft were signed by Taxpayer, but the owner of the aircraft was [MPA]. This cannot be lightly overlooked. The leases to rent the aircraft were signed in January and February 2004. The name change amendment was filed over ten months later. In overview, for the first fourteen months, Taxpayer, [MPA LLC], and [JM] all stated public representations as to the ownership and control of the aircraft. Taxpayer has been lax in its duties to file paperwork with both the Department and the FAA. Taxpayer seeks the benefits of an exemption, but has been unwilling to assume the associated responsibilities to establish the exemption. The Indiana Supreme Court has long held that a party may not have the benefits without the burden. See Cambria Iron Co., v. Union Trust Co., 55 N.E. 745, 749 (1899).

Taxpayer has not demonstrated to the Department a coherent chain of ownership and control. Tax exemption determinations are based upon an analysis of the transaction. In this case, the Department is unable to trace the transactions in a coherent manner. Taxpayer has not been responsive to explain who was using the aircraft in what manner at what time. Three separate entities held themselves out as owning and controlling the aircraft. The law allows the establishment of separate entities to protect against liability. But the entity formalities must be observed. Taxpayer, [MPA LLC], and [JM] have blurred and blended the formalities. Taxpayer did not affirmatively fulfill his regulatory

and statutory obligations to register the aircraft in a timely manner. As well, Taxpayer has not sufficiently substantiated its entitlement to a sales and tax exemption for rental and leasing.

**FINDING**

For the reasons stated above, Taxpayer's protest is denied .

AAG/JMM—052810